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November 30, 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA FEDERAL EXPRESS

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Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

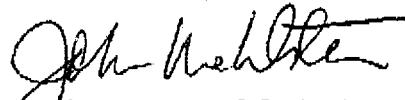
RE: Comments filed in Response to Notice of  
Proposed Rulemaking in MM Docket 92-260 (In  
the matter of Implementation of the Cable  
Television Consumer Protection and  
Competition Act of 1992 Cable Home Wiring)

Dear Ms. Searcy:

Enclosed for filing are the Comments of WJB-TV  
Limited Partnership which are submitted in response to  
the Notice of Proposed Rulemaking released on November  
6, 1992, in MM Docket No. 92-260. Pursuant to  
Paragraph 8 of the Notice, an original and nine (9)  
copies are enclosed so that each Commissioner may  
receive a personal copy.

If you have any questions or need additional  
information, please advise.

Sincerely,

  
John H. Muehlstein

JHM/km  
Enclosure

cc: Walter R. Pettiss (w/enc.)  
Kenneth E. Hall (w/enc.)  
Robert A. Brannon (w/enc.)

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BEFORE  
THE FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: )  
 )  
Implementation of the Cable )  
Television Consumer Protection and )  
Competition Act of 1992 )  
 )  
Cable Home Wiring )  
\_\_\_\_\_ )

MM Docket No. 92-260  
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COMMENTS OF  
WJB-TV LIMITED PARTNERSHIP

1           In its Notice of Proposed Rulemaking in MM Docket No. 92-  
2 260 released November 6, 1992, the Commission requested Comments  
3 concerning the disposition of the wiring installed by a cable  
4 television system operator within the premises of its subscribers  
5 upon the termination of service.<sup>1</sup> This wiring is often referred to  
6 as "inside wiring".<sup>2</sup>

---

7           <sup>1</sup> Section 16(d) of the Cable Television Consumer Protection and  
8 Competition Act of 1992 provides:

9  
10           HOME WIRING. Section 624 of such Act (47 U.S.C. 544) is  
11 further amended by adding at the end the following new  
12 subsection:  
13  
14           "(i) Within 120 days after the date of enactment of this  
15 subsection, the Commission shall prescribe rules  
16 concerning the disposition, after a subscriber to a cable  
17 system terminates service, of any cable installed by the  
18 cable operator within the premises of such subscriber".  
19

20           <sup>2</sup> While the FCC captioned its News Release as "Cable Home  
21 Wiring Addressed" (emphasis added), the issue is much broader than  
22 simply single-family residential inside wiring. Thus, we will use  
23 the term "inside wiring" throughout these Comments to refer to the

## I. BACKGROUND

WJB-TV Limited Partnership ("WJB") has a significant interest in this issue. As the general partner of the owner and operator of a wireless cable television system, it recently became embroiled in a costly and disruptive dispute concerning the ownership of inside wiring in a multiple-dwelling high-rise building. Its experiences are presumably indicative of the problem and illustrate the need for the Commission to promulgate formal rules on this issue.

Although WJB's system has been operational only since May, 1992, it already serves over two thousand customers. Like many wireless cable systems, it competes head-to-head with an entrenched cable operator. Many of its customers are former subscribers of the cable operator, even though it offers fewer channels of programming due to the limited frequency spectrum available to wireless cable providers. In addition, WJB has many customers that previously did not subscribe to cable television service.

Recently, WJB entered into a contract to provide video services to the homeowners of a high-rise condominium complex located within its service area. Since the construction of the

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inside wiring found in single family homes, multiple-dwelling buildings, and other multi-unit buildings as well. Where needed, we will distinguish between the various installations of inside wiring and point out specific problems and concerns related to each.

1 building in the mid 1980's, the homeowners had been customers of  
2 the cable operator.

3           Shortly after notifying the cable operator of its  
4 decision to utilize WJB's services, both the homeowners and WJB  
5 were informed by the cable operator that the operator owned all of  
6 the inside wiring, that it had an exclusive easement to the  
7 building, and that WJB was not permitted to use any inside wiring.  
8 This notification came as a complete surprise to the homeowners,  
9 who, through their management, had represented to WJB that they  
10 owned the inside wiring.

11           In an effort to resolve the question, both WJB and the  
12 homeowners conducted an investigation into the ownership of the  
13 wiring. They reviewed the original contracts entered into between  
14 the developer of the complex and the cable operator, they contacted  
15 the general contractor of the complex, and they researched  
16 applicable law on the subject. These inquiries led them to  
17 conclude that the claims of the cable operator were unfounded.

18           WJB and the homeowners each sent separate letters to the  
19 operator outlining their findings and inviting the operator to  
20 provide any evidence to support its ownership claim. The operator  
21 responded by having its attorney send a letter to WJB, with a copy  
22 to the homeowners. Rather than provide any new information on the  
23 ownership claim, the letter stated that any attempt to utilize the  
24 inside wiring would constitute "conversion, trespass, and  
25 violations of section 812.014" of the state statutes.  
26 Interestingly, Section 812.014 is a criminal statute setting forth

1 the elements and penalties for general theft in the state where  
2 this system is located.

3 Although the homeowners reasonably believed that they  
4 owned the inside wiring, WJB nevertheless re-wired the entire  
5 building.<sup>3</sup> It is now serving the building through its own wiring  
6 (which will revert to the homeowners at the end of the contract).  
7 Although this re-wiring was expensive, it was necessary to avoid,  
8 to the extent possible, having the homeowners or WJB dragged into  
9 an expensive and time-consuming lawsuit or perhaps charged with  
10 criminal conduct by the cable operator.

11 As is evidenced by WJB's experiences, an entrenched cable  
12 operator, by claiming ownership of inside wiring, may be able to  
13 coerce a homeowner into remaining as a subscriber. Threatened with  
14 civil and criminal actions and the need to tear up his walls in  
15 order to install new wiring, the homeowner or building owner is  
16 less likely to switch providers, even if he would otherwise be

---

17 <sup>3</sup> WJB did use the subscriber drops that extended from the  
18 equipment room on every other floor to each individual unit. The  
19 Declarations of Condominium which was filed in the county's public  
20 records stated that:

21  
22 c. ADDITIONAL ITEMS INCLUDED WITH UNITS. All of the  
23 following items are included with each Unit if such items  
24 are wholly or partially situate within a Unit and  
25 designed and installed to serve only such Unit:

26  
27 \* \* \* \* \*

28  
29 7. all piping, ducts, wiring, cables and conduits  
30 of any kind or type serving only the particular Unit.

31  
32 Even though this document predated any easements or  
33 contracts given to it, the cable operator's claims of ownership in  
34 the inside wiring was so broad that it appeared that they claimed  
35 ownership of the subscriber drops as well.

1 inclined to do so. As a result, a cable operator's claim to inside  
2 wiring, even if unfounded, may have the effect of destroying  
3 competition in the marketplace, thus undercutting one of the main  
4 objectives of the Cable Television Consumer Protection and  
5 Competition Act of 1992 (the "1992 Cable Act").

## 7 II. COMMENTS OF WJB

8 WJB has divided its Comments into two sections, the first  
9 which addresses wiring installed after the Commission issues a  
10 Final Order in this proceeding and the second which discusses  
11 wiring installed before that date. For the first category, the  
12 Commission should issue a blanket ruling that such wiring belongs  
13 to the homeowner, except in limited circumstances involving certain  
14 multiple-dwelling units and multi-unit buildings. For the second  
15 category, the Commission should establish certain criteria that can  
16 be used to resolve questions on a case-by-case basis.

### 18 1. Wiring Installed After the Date of the Commission's Final Order

#### 19 a. Wiring installed in single-family dwellings

20 It is clear that one of the major objectives of the 1992  
21 Cable Act was to promote competition in the video marketplace. See  
22 Conference Report, Cable Television Consumer Protection and  
23 Competition Act of 1992, Sections 2(a)(2), 2(b)(4) and 2(b)(5).  
24 For this reason, the Commission should establish a rule that  
25 provides that all inside wiring belongs to the homeowner. Such a  
26 rule will foster competition by allowing alternative providers of

1 video services to compete in the marketplace without the threat of  
2 expensive and prolonged litigation.

3 This rule would be consistent with the legislative  
4 history on this issue. See H.R. Rep No. 628, 102d Cong., 2d Sess  
5 (1992) (the "House Report") at 118; S. Rep. No. 92, 102d Cong. 1st  
6 Sess (1991) (the "Senate Report") at 23. It would ensure that  
7 consumers are protected from the damage or destruction that might  
8 result to their homes from removal of the wiring. See Senate  
9 Report at 23; House Report at 118. Furthermore, it would protect  
10 the property rights of installers of the wiring and encourage  
11 continued investment in the industry by presumably allowing these  
12 installers to avoid the payment of property taxes and to expense  
13 the installation costs for income tax purposes.<sup>4</sup>

14 The Commission should not allow this rule to be avoided  
15 by contrary provisions in cable subscription agreements. These  
16 agreements are typically drafted by cable operators without  
17 negotiation with the homeowner. Furthermore, as WJB's experiences  
18 indicate, many subscribers simply do not understand the importance  
19 or relevance of this issue when they enter into their subscription  
20 agreements. To allow operators, through their boiler-plate  
21 agreements, to retain ownership of the wiring would effectively  
22 undercut the objectives that Congress set forth in the 1992 Cable  
23 Act and that this proceeding seeks to implement.

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24 <sup>4</sup> WJB is aware that the Internal Revenue Service presently does  
25 not allow installers to expense those costs. However, a rule  
26 dictating that title to the wiring vests in the homeowner would  
27 appear to constitute good grounds for the IRS to reverse its  
28 position.

1           **b.   Wiring installed in multiple-dwelling and multi-**  
2           **unit buildings**

3  
4           WJB proposes a slightly-different version of the rule in  
5 the case of multiple-dwelling units and multi-unit buildings which  
6 are managed or owned by a single person or group. Because of the  
7 higher costs of installation and the fact that services are often  
8 provided pursuant to multi-year contracts (as opposed to short-term  
9 or terminable at will contracts which are typically used with  
10 individual homeowners), greater rights should be allowed to  
11 installers of wiring.<sup>5</sup> WJB thus proposes that these installers be  
12 allowed to claim title to the wiring for the length of the  
13 subscriber's contract, up to a total of five years.<sup>6</sup> The actual  
14 costs (which costs could include a reasonable charge for labor  
15 costs directly associated with the installation) of the wiring  
16 would be required to be specified in the contract. If the contract  
17 is thereafter terminated prior to its expiration, regardless of the  
18 reason, the customer should be allowed to purchase the wiring at a

---

19           <sup>5</sup> The Commission asks for Comments on whether a distinction  
20 should be made between "common wiring within the building" and  
21 "wiring within the dwelling unit of individual subscribers." WJB  
22 proposes that the former category be governed by the rules  
23 suggested in this paragraph (i.e., the installer retains some  
24 rights for a period of time, but the subscriber is given the right  
25 to purchase), but that wiring in the second category automatically  
26 be deemed the property of the subscriber upon installation. This  
27 distinction is logical because the second category (i.e., the so-  
28 called "drops") represent only a small portion of the installer's  
29 investment and consequently, are not subject to the same concerns  
30 articulated in this paragraph.

31           <sup>6</sup> The same rule should not apply to equipment such as antennas,  
32 multiplexes, and set-top converters, which should remain the  
33 property of the installer.



1 price equal to the actual costs specified in the contract, less  
2 depreciation calculated on a straight-line basis.

3  
4 **2. Wiring Installed Before the Date of the Commission's Final**  
5 **Order**

6  
7 **a. Establish presumption in favor of homeowner or**  
8 **building owner**

9  
10 The objective of promoting competition should guide the  
11 Commission in this proceeding, regardless of when the wiring is  
12 installed. However, to fully protect the property rights of  
13 installers of inside wiring installed before the date of its Final  
14 Order, the Commission should adopt a slightly different approach.

15 First, the Commission should establish a strong  
16 presumption that the inside wiring belongs to the homeowner. The  
17 burden of overcoming this presumption should be placed on the  
18 installer. In determining whether this burden has been met, the  
19 Commission should establish specific criteria, each of which the  
20 cable operator would be required to satisfy. These should include,  
21 at a minimum, the following:

- 22 (1) **whether the subscription agreement includes a**  
23 **specific reservation of ownership or otherwise**  
24 **restricts the homeowner's use of the wiring.**  
25

26 Unless the cable operator's subscription agreement  
27 clearly and unambiguously reserves ownership of the wiring, the  
28 customer should be deemed the owner. The cable operator, as the  
29 party that drafted the agreement, should have the burden of  
30 establishing this reservation. Even if the agreement purports to  
31 reserve ownership, the Commission should consider whether in fact

1 the normal attributes of ownership are present, especially if the  
2 reservation is included in inconspicuous or broiler-plate language.  
3 For example, an agreement that does not restrict the uses that a  
4 homeowner may make of the wiring upon termination of service, see  
5 Tele-vue Systems, Inc. v. County of Contra Costa, 25 Cal.App.3d,  
6 101 Cal. Rptr. 789 (Ct. of App. 1972); Bylund v. Department of  
7 Revenue, Teleprompter Corporation, 9 Or. T.R. 76 (1981) (1981  
8 Westlaw 2270); T-V Transmission, Inc. v. County Board of  
9 Equalization of Pawnee County, 338 N.W.2d 752 (Neb. 1983), should  
10 not be deemed to reserve ownership. The lack of such restrictions  
11 should be viewed as a clear indication that the operator never  
12 intended to claim any continuing ownership of the wiring upon  
13 termination, notwithstanding the language of the agreement.

14 (2) **whether the cable operator has consistently paid**  
15 **property taxes on all of the inside wiring.**  
16

17 Ironically, most of the judicial decisions on the inside  
18 wiring issue arose out of attempts by cable operators to disclaim  
19 ownership of the wiring in order to avoid the payment of property  
20 taxes. See Tele-vue, 101 Cal. Rptr. at 790; Hoppe v. Televue  
21 Systems, Inc., Docket Nos. 13386-13390, Board of Tax Appeals, State  
22 of Washington, July 20, 1976; Bylund, 9 Or. T.R. at \_\_\_\_; T-V  
23 Transmission 338 N.W.2d at 753. Some companies are still  
24 disclaiming ownership of the wiring for this purpose. See "Time  
25 Warner's Memphis System Wins Tax Cut," Multichannel News (October  
26 12, 1992). It clearly would be inequitable to allow cable  
27 operators, who traditionally have disavowed ownership of inside  
28 wiring, to now claim it in order to destroy their competition.

1 Thus, the Commission should establish a ruling that any operator  
2 who cannot clearly prove that it has consistently paid property  
3 taxes on all of its inside wiring since the date of installation  
4 cannot now claim ownership of that wiring. Furthermore, the  
5 Commission should not allow an operator to claim ownership of the  
6 wiring in some of its systems, but not in others.

7 (3) whether the wiring was installed in such a manner  
8 so that it has not become permanently attached to  
9 the homeowner's property.

10  
11 The installation of inside wiring generally involves  
12 intrusion into the walls, ceilings, and floors of the subscriber's  
13 home. Often times, this requires drilling into or cutting of the  
14 structure and intermingling the wiring with pipes, conduits, and  
15 other wiring which are also embedded in the home. Accordingly,  
16 there is a danger that removal of the inside wiring could cause  
17 damage to the subscriber's home. See Senate Report at 23. Faced  
18 with this reality, many courts have determined that inside wiring  
19 cannot be removed by the operator, reasoning that the wiring has  
20 become a fixture under state law. See Metropolitan Cablevision,  
21 Inc. v. Cox Cable Cleveland Area, \_\_\_\_ Ohio App. 3d \_\_\_\_ (1992);  
22 Televue Systems, Inc. 101 Cal. Rptr. at 791; Bylund, Or. T.R. at  
23 \_\_\_\_; T-V Transmission, 338 N.W.2d at 754; Group W Cable, Inc. v.  
24 Mobile Cablevision, Inc., CV 86-000145, Circuit Court of Mobile  
25 County (September 11, 1986). Likewise, the Commission should rule  
26 that an operator cannot claim ownership of the wiring if removal of  
27 it might cause any damage or destruction to a subscriber's home or

1 if it has been affixed in such a manner so that it has become a  
2 fixture under state law.

3 (4) whether the company typically removes the wiring  
4 upon termination of service.  
5

6 Many cable operators do not remove the inside wiring upon  
7 termination of service, generally citing the relatively small  
8 salvage value of the wiring and the disproportionate cost of its  
9 removal. See T-V Transmission, 338 N.W.2d at 753. In essence,  
10 these operators are making an economic decision to abandon the  
11 wiring. It would be inequitable to allow them to now re-claim  
12 ownership simply for the purpose of thwarting competition.<sup>7</sup>  
13

#### 14 b. Operation of the presumption

15 Unless the operator can clearly satisfy each and every  
16 one of the above criteria, the wiring would be deemed to be the  
17 property of the homeowner upon the termination of service. The  
18 homeowner would be free to allow any other video provider to use  
19 it, could connect it to his own antenna, could remove it or could  
20 simply do nothing.  
21  
22

---

23 <sup>7</sup> In examining this criteria, the Commission should focus upon  
24 the operator's traditional course-of-dealing, rather than its  
25 conduct designed to thwart competition. In at least one recent  
26 case, an operator that formerly abandoned its wiring changed its  
27 policy when a wireless operator entered its service area. See  
28 Metropolitan Cablevision, Inc. v. Cox Cable Cleveland Area,  
29 Ohio App. 3d. \_\_\_\_\_ (1992). In a declaratory action brought by the  
30 wireless operator and a homeowner who objected to removal of the  
31 wiring from her walls, the Ohio Court of Appeals ruled against the  
32 cable operator and refused to allow the removal.

1           **c.    Homeowner's right to purchase the wiring**

2           Even if the operator can establish ownership, the  
3 homeowner should in all circumstances be given the right to acquire  
4 the inside wiring. As the Commission observed in its Notice of  
5 Proposed Rulemaking, "The Act's legislative history appears to  
6 favor enabling the subscriber to acquire home wiring upon  
7 termination of service." See Notice of Proposed Rulemaking, MM  
8 Docket 92-260 (Released November 6, 1992). See also Senate Report  
9 at 23. ("...the FCC should extend its policy to permit ownership  
10 of the cable wiring by the homeowner.")

11           The Commission should establish a formula or method for  
12 calculating the purchase price for the wiring. First, if the  
13 installer charged an installation fee in order to initiate service,  
14 the homeowner should be presumed to have already purchased the  
15 wiring. In all other cases, the Commission should establish a  
16 purchase price equal to the wiring's depreciated book value for  
17 income tax purposes or its assessed valuation for property tax  
18 purposes, but in no event should the price exceed the fair market  
19 value on the date of the acquisition.

20  
21                           **III. CONCLUSION**

22           Claims to inside wiring threaten to undercut one of the  
23 principal objectives of the Cable Television Consumer Protection  
24 and Competition Act of 1992, that of promoting competition in the  
25 video marketplace. Unfortunately, cable operators, by using civil  
26 and criminal threats and by insisting that they are able to tear

1 into the walls and floors of homeowners, are attempting to prevent  
2 alternative providers of video services, such as WJB, from  
3 providing this competition. By establishing rules that clarify the  
4 rights of homeowners to this inside wiring, the Commission can  
5 eliminate this type of conduct and foster this much-needed  
6 competition.

7  
8 Respectfully submitted this 30<sup>th</sup> day of November, 1992.

10 **WJB-TV Limited Partnership**

11 BY its attorneys:

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